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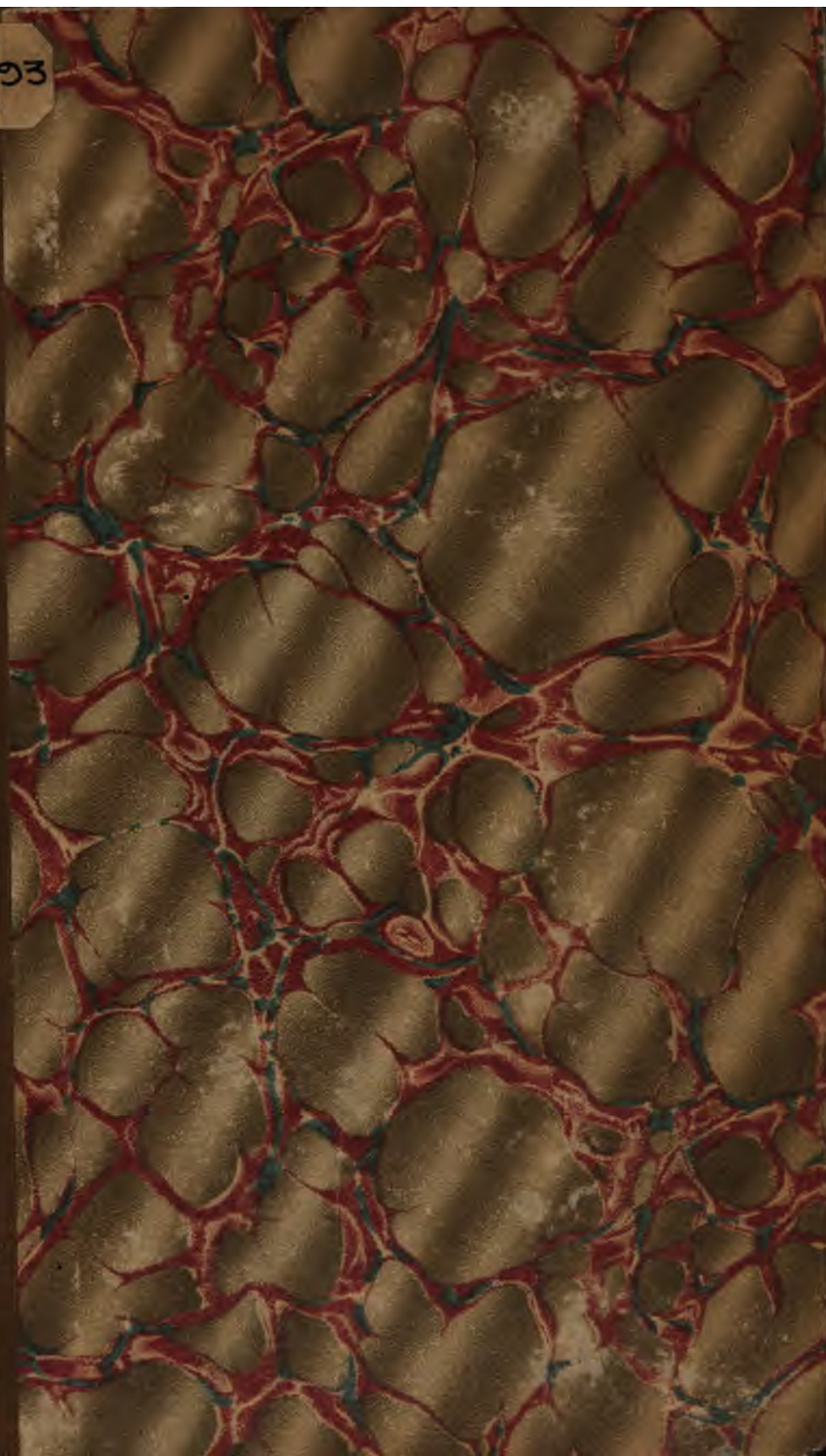
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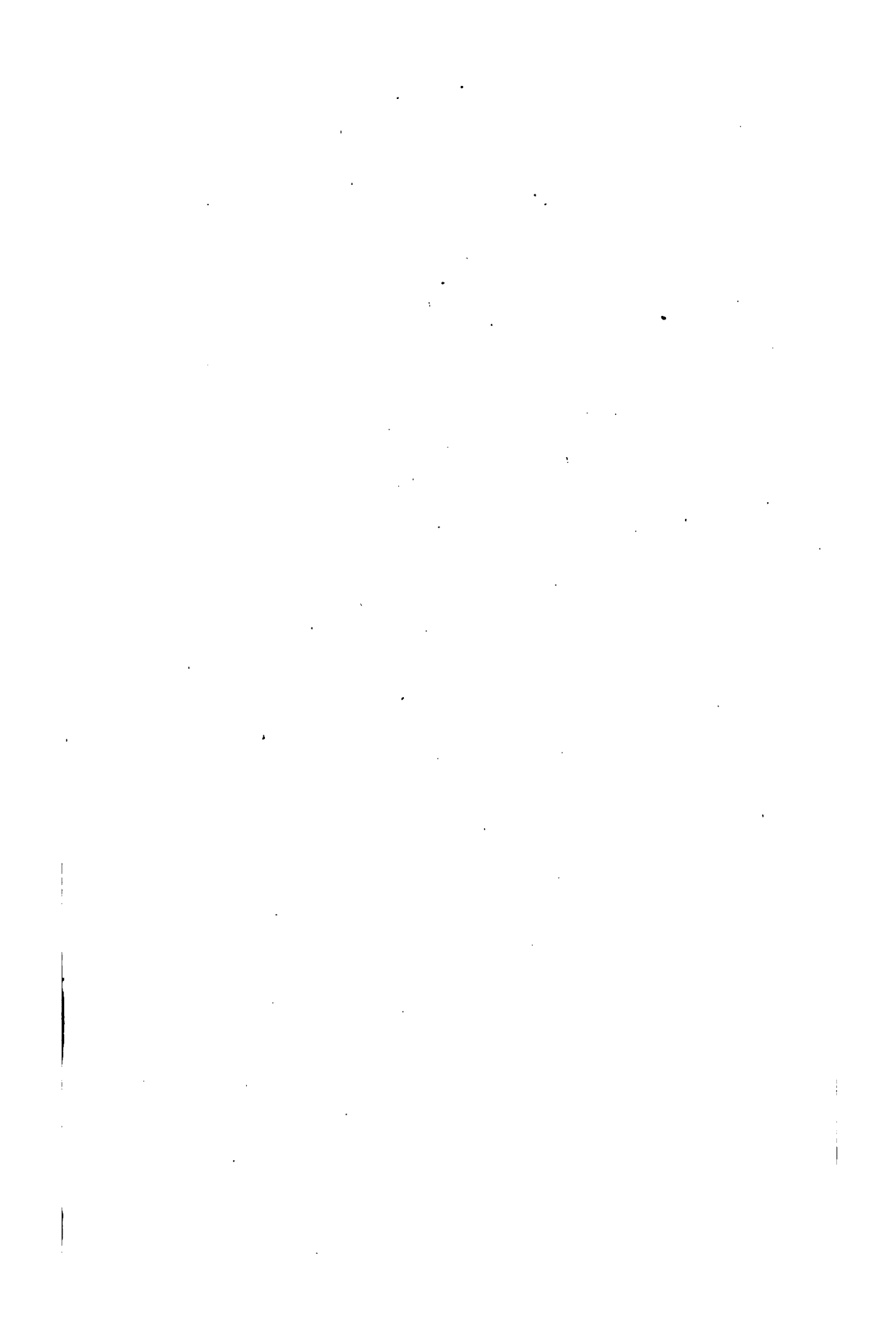


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*The Proprietors of
the Boston Daily Advertiser*





Mr. Laddan *with regard to*

PROCEEDINGS

W. H. Chan

IN THE

QUO WARRANTO CASE

OF

[THE STATE EX RELATIONE THE ATTORNEY-GENERAL

VS.

THOMAS P. WALKER.

COLUMBIA, S. C.:

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South Carolina —

THE STATE EX RELATIONE THE ATTORNEY-
GENERAL VS. THOMAS P. WALKER.

The following correspondence will show the origin of this case :

OFFICE ATTORNEY-GENERAL SOUTH CAROLINA.
COLUMBIA, S. C., August 5, 1868.

Thomas P. Walker :

SIR : I am informed on undoubted authority that you are assuming to act as Coroner of Richland County, although your successor has been elected, and has been duly qualified and entered upon the duties of his office as Coroner.

I hereby notify you to desist from any further assumption of the duties of the office of Coroner of Richland County. In case this notice is disregarded by you, I shall take immediate steps to restrain you from further unlawful assumption of the functions of the office aforesaid.

Very respectfully,

Your obedient servant,

D. H. CHAMBERLAIN,
Attorney-General South Carolina.

COLUMBIA, S. C., August 5, 1868.

D. H. Chamberlain, Esq. :

SIR : I have received yours of the 5th instant, purporting to be signed by you as Attorney-General of South Carolina. I do not recognize you as the Attorney-General of South Carolina by any constitutional law now in existence or by any military appointment. You are, therefore, neither *de jure* nor *de facto* Attorney-General of this State.

You direct that I shall desist from any further assumption of the duties of the office of Coroner of Richland County; otherwise you will take immediate steps to restrain me from further unlawful assumption of the functions of the office aforesaid. I do not exercise any such office in any such County, nor do I recognize any such County to exist; but I do exercise the office of Coroner of Richland District, under a constitutional appointment, and from that office I have never been removed, either by military appointment of a successor or by any constitutional law or appointment whatever. I shall therefore continue to exercise the functions of the said office for Richland District until removed by due process from the civil Courts.

I beg to refer you to Mr. James D. Tradewell, my attorney, who will be assisted by Messrs. Fickling & Pope on my behalf.

Very respectfully,

Your obedient servant,

THOMAS P. WALKER,

Coroner for Richland District.

The next step in the case was an application by the Attorney-General, D. H. Chamberlain, Esq., in the form of a suggestion or information in the nature of a *quo warranto*, as follows :

STATE OF SOUTH CAROLINA, }
RICHLAND COUNTY. }

To the Honorable A. J. WILLARD, one of the Associate Justices of the Supreme Court of the said State :

Informing, on the part of the State, sheweth unto your Honor, Daniel H. Chamberlain, Attorney-General of the State of South Carolina, that, in accordance with the provisions of a Constitution adopted by a Convention of the people of South Carolina, and ratified by the people of said State on the 14th, 15th and 16th days of April, in the year 1868, which Constitution provides, in Section 30, Article 4, thereof, as follows, that is to say : "The qualified electors of each County shall elect a Sheriff and a Coroner for the term of four years, and until their successors are elected and qualified;" and under authority of the Commanding General of the Second Military District, conferred upon said Commanding General by the terms of the Acts of the Congress of the United States known as the Reconstruction Acts and the Acts supplementary thereto, an election was ordered and held on the 2d and 3d days of June, in the year 1868; that at said election William B. Johnston was duly elected to the office of Coroner for Richland County, in the State aforesaid, which election was duly proclaimed in General Orders No. 122, emanating from the Headquarters of the Second Military District, and dated at Charleston, in the said State, on the 1st day of July, 1868; that subsequently to the order aforesaid, the said William B. Johnston was duly qualified and commissioned as Coroner of the County aforesaid, in the State aforesaid, and entered upon the duties of his office; that by the terms of General Orders No. 120, from the Headquarters of the Second Military District, dated at Charleston, June 30, 1868, Paragraph 7, it is declared that the officers elected at the election held on the 2d and 3d days of June shall, after qualification, perform the duties prescribed for said officers by law, under the existing Provisional Government of the State, until the General Assembly of the State of South Carolina shall otherwise prescribe by law; that nevertheless, notwithstanding the facts above set forth, one Thomas P. Walker, of Richland County, in the said State, claims to exercise, and does usurp and exercise, the office of Coroner, of the County aforesaid, in violation of law, and in derogation of the rights of the people of the said State, and especially of the rights of the aforesaid William B. Johnston.

In consideration whereof, and to the end that justice may be done in

the premises, the Attorney-General aforesaid prays your Honor that a writ of *quo warranto* be directed to be served upon the said Thomas P. Walker, commanding him at a certain day, and under a certain pain therein to be inserted, to be and appear before your Honor, and then and there to show by what authority he claims to exercise the office of Coroner of Richland County aforesaid, and to answer all and singular the premises, and to stand to, perform and abide such order and judgment therein as to your Honor shall seem meet.

(Signed)

DANIEL H. CHAMBERLAIN,
Attorney-General of South Carolina.

STATE OF SOUTH CAROLINA, }
RICHLAND COUNTY. }

Personally appeared before me, Daniel H. Chamberlain, the Attorney-General mentioned in the foregoing suggestion, who, being first duly sworn, saith that the matters and things therein set forth, as of his own knowledge, are true, and such as are derived from the information of others he believes to be true.

(Signed)

DANIEL H. CHAMBERLAIN.

Sworn to before me this 6th day of August, 1868.

(Signed)

W. B. NASH, Magistrate.

IN THE MATTER OF THE STATE EX PARTE THE ATTORNEY-GENERAL VS. THOMAS
P. WALKER.

On reading the suggestion in the above matter, it is ordered that the said Thomas P. Walker do show cause before me, at Chambers, at Columbia, on Friday, the 7th August, 1868, at half-past 9 o'clock A. M., why the writ of *quo warranto* should not issue as in the said information is prayed. Let a copy of the said suggestion accompany this order, and be served on the said Thomas P. Walker.

(Signed)

A. J. WILLARD,
Associate Justice of South Carolina.

AT CHAMBERS, COLUMBIA, August 6, 1868.

The hearing of the case was opened on Saturday, the 8th instant, at half-past 9 o'clock, A. M., when counsel for respondent appeared and moved a delay. His Honor granted until Monday the 10th instant.

On Monday, the 10th instant, the hearing was resumed, and counsel for respondent presented a plea which they denominated a "Plea to the jurisdiction of the Court," as follows:

EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

And the said Thomas P. Walker, upon whom a notice had been served, signed by one A. J. Willard, naming himself "Associate Justice, South Carolina," from which it is inferred that he meant to style himself one of the Associate Justices of the State of South Carolina, commanding him to show cause, at Chambers, at Columbia, on Friday, the 7th day of August, 1868, at half-past 9 o'clock A. M., why a writ of *quo warranto* should not issue as in the said information is prayed, in his proper person, comes and prays that the said Associate Justice ought not to have or take further cognizance of the said supposed information at the relation of one Daniel H. Chamberlain, styling himself Attorney-General of South Carolina, because he says that the said Daniel H. Chamberlain is not the Attorney-General of the State of South Carolina, in whose name and at whose relation only such information can be made in behalf of the said State; and that Isaac W. Hayne, Esq., is such Attorney-General, under the Constitution and laws of the State of South Carolina, and under the Constitution of the United States. And because he says that the said A. J. Willard is not an Associate Justice of the State of South Carolina, before whom such information could be preferred, and that the Hon. Benjamin F. Dunkin is the Chief Justice of the said State, and the Hon. David L. Wardlaw and John A. Inglis are Associate Justices of said State, and the Hon. Thomas N. Dawkins, Alfred P. Aldrich and Franklin J. Moses, (if the last named has not accepted a disqualifying office,) are the Judges of the Court of Common Pleas and General Sessions of the said State, under the Constitution and laws of the State of South Carolina and under the Constitution of the United States, one of whom only is legally authorized and empowered to hear such information, and sign a rule to show cause under the writ of *quo warranto* aforesaid. That the said ground of information, if any such grounds of information have accrued to the said so-called Attorney-General of South Carolina, accrued to the said so-called Attorney-General out of the jurisdiction of the said supposed Court, that is, to say, at Columbia, in the District of Richland, and not at Columbia, in the County of Richland, or elsewhere, in the jurisdiction of the said supposed Court. And this the said defendant is ready to verify. Whereof he prays judgment whether the so-called Associate Justice can or will take further cognizance of the action aforesaid.

JAMES D. TRADEWELL,
FICKLING & POPE,
Respondent's Attorneys.

Immediately upon the reading of this so-called plea, the Attorney-General moved that it be peremptorily overruled, on the ground that the plea contradicted itself, being entitled "A plea to the jurisdiction of the Court," while by its averments it denied the official existence of His Honor Judge Willard, and thus sought to introduce a matter which

could not so much as be entertained by the Judge before whom it was brought. After argument heard, His Honor sustained the motion of the Attorney-General, and the plea was overruled and declared inadmissible.

The respondent, by his counsel, next moved that time be granted to prepare a proper answer to the original information of the Attorney-General, and the further hearing of the case was postponed until 10 o'clock A. M. on the 10th instant.

On resuming the case, on the 10th instant, the respondent, by his counsel, presented a petition to remove the case from the jurisdiction of the State Court to that of the United States, as follows :

EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

To the Honorable A. J. WILLARD, Associate Justice of the State of South Carolina :

The petition of Thomas P. Walker sheweth that the above stated case arises under the Constitution and laws of the United States. He therefore prays that the same may be removed for trial into the next Circuit Court of the United States to be held in the District of South Carolina, or that the same may be ordered to be heard by His Honor George S. Bryan, Judge of the United States Circuit Court, at Charleston, at such time and place as he shall appoint. And your petitioner shall ever pray.
THOMAS P. WALKER.

Messrs. TRADEWELL, FICKLING & POPE for petitioner.

Upon the reading of the foregoing petition, the Attorney-General moved that the prayer of the petitioner be denied. A long, animated discussion ensued. Messrs. Fickling & Pope made extended arguments in support of the petition, taking the ground generally that the case was one which came within the provisions of the Judiciary Act of the United States of 1789, and citing several decided cases, no one of which could possibly be assimilated to the present case.

The Attorney-General replied and showed clearly that by the terms of the Judiciary Act, and from all the cases cited for the respondent in support of the petition, there was no show of authority for removal of the present cause.

His Honor Judge Willard decided that the prayer of the petitioner should be denied upon substantially the same grounds as those taken by the Attorney-General.

The counsel for the respondent then presented the following return to the original Suggestion in this case :

THE STATE EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

The return and answer of Thomas P. Walker to the information of Daniel H. Chamberlain, Attorney-General, on the part of the State of South Carolina :

And the said Thomas P. Walker, for answer and return to the said information, saith, and for cause against the rule signed by A. J. Willard, Associate Justice of the Supreme Court of the State of South Carolina, sheweth :

1st. That Isaac W. Hayne is Attorney-General of the said State, in whose name alone such information can be presented.

2d. That the Honorable Benjamin F. Dunkin is Chief Justice of South Carolina, and the Honorables David Lewis Wardlaw and John A. Inglis are the Associate Justices of the Appeal Court of South Carolina, and the Honorables Thomas W. Glover, Robert Munro, Thomas N. Dawkins, Alfred P. Aldrich and Franklin J. Moses, (if the said Franklin J. Moses has not accepted a disqualifying office,) are the Judges of the Court of Common Pleas and General Sessions of the said State, under the Constitution and laws of the State of South Carolina and the Constitution of the United States, and that the said Chief Justice, or one of the said Associate Justices of the Appeal Court, or one of the said Justices of the said Court of Common Pleas and General Sessions, is alone authorized and empowered to hear such information and cause a *quo warranto* to issue as aforesaid.

3d. That the said ground of information (if any such ground of information has accrued to the said D. H. Chamberlain, Attorney-General, as aforesaid,) accrued out of the jurisdiction of the said Court, that is to say, at Columbia, in the District of Richland, and not at Columbia, in the County of Richland, or elsewhere in the jurisdiction of the said Court.

4th. That the said Thomas P. Walker is now the legally appointed Coroner of Richland District, appointed to hold for four years and until a successor shall be appointed; and that such successor has not been so appointed; and that W. B. Johnston is not Coroner legally appointed by the laws and Constitution of the State of South Carolina and the Constitution of the United States.

5th. That if the said W. B. Johnston has been appointed Coroner, as aforesaid, his term of office has not yet commenced, nor can his said term of office commence until the term of office of the said Thomas P. Walker, the respondent, has expired, which term will not expire until the 21st day of December, which will be in the year of our Lord one thousand eight hundred and sixty-eight.

And this the said respondent submits as his answer and return to the rule to show cause as aforesaid.

JAMES D. TRADEWELL,
FICKLING & POPE,
For respondent.

Personally appeared, Thomas P. Walker, who, upon oath sayeth that the facts set forth in his above answer and return are, he believes, true.
Sworn to before me this 10th day of August, 1868.

THOMAS P. WALKER.

D. B. MILLER, C. C. P.

After the reading of the foregoing return, the Attorney-General promptly excepted to the first three paragraphs thereof, and moved that the same be stricken out.

This motion he urged and supported upon the following grounds :

That it was an attempt at a different time, and under a new guise, to introduce precisely the same grounds of defence which had been excepted to by the Attorney-General and decided adversely to the respondent in the matter of the so-called "Plea to the jurisdiction of the Court;" and that the aforesaid paragraphs of the return ought, therefore, to be summarily stricken out.

The discussion of this point was warm and exciting. The counsel for the respondent charged that the Attorney-General was hypercritical and captious. To this the Attorney-General retorted that he should claim all his legal rights, and should insist that the pleadings in this case should be correct and formal before the case proceeded upon its merits; and that he was entirely indifferent as to whether such a course on his part was agreeable or distasteful to the learned counsel for the respondent. At the conclusion of the discussion the case was adjourned, and the decision of the point raised was reserved until 10 o'clock Wednesday, 12th instant.

Upon resuming the hearing of this case, His Honor Judge Willard, read the following opinion upon the point taken yesterday by the Attorney-General :

THE STATE IN REL. D. H. CHAMBERLAIN, ATTORNEY-GENERAL *vs.* THOMAS P. WALKER.

CHAMBER OF SUPREME COURT, August 12, 1868. }
WILLARD, ASSOCIATE JUSTICE. }

The Attorney-General excepts to certain portions of the return made by the respondent to the rule to show cause, and moves to strike out the 1st, 2d and 3d paragraphs of the return.

The motion is pressed, and the Court has no alternative but to pass upon the merits of the application.

Paragraph one, alleges that Isaac W. Hayne, is Attorney-General of this State, and that his name is essential as relator to this proceeding.

The authority of an Attorney is not the subject of all issueable averment, in a case in which he assumes to appear; as an officer of the Court he is presumed to be known, and if his authority to appear in a given case is questioned, the fact is ascertained outside of the result of the case. While the allegation in question could not be regarded as well pleaded either in abatement or in bar, still, as the rules of pleading are not applied with technical precision to cases of this class, the allegation may be allowed to stand as notice that the respondent excepts to the representative character assumed by the Attorney-General.

In no aspect of the case can any conflict of claim between the Attorney-General on record, and any other claimant to exercise the functions

of that office become the subject of enquiry in a collateral way in this case.

Paragraph second alleges the existence of a Court in the State of South Carolina, denominated the Court of Appeals, and declares certain persons named therein to hold the offices of Chief Justice and Associate Justices in connection therewith. It also alleges the existence of certain Circuit Courts, and Courts of General Sessions in this State, and that certain persons named therein are the lawful Judges thereof. It proceeds to allege that the authority to hear informations of the character of the present, and to issue writs of *quo warranto* is vested in such persons. No ground is perceived for ascribing relevancy to such averments. If the design of the pleader was to deny to a Justice of the Supreme Court authority in the given case, such object might have been attained by an averment of a more direct character. At all events, it is not essential to such an issue that any other source of authority supposed to possess such competency, should be set forth. The existence of a Court of Appeals, or of Circuit Courts, and Courts of General Sessions has no possible relevancy to the case in hand, and is especially exceptional as an averment with return of the respondent when coupled, as in the present case, with the further allegation of the legal incumbents to such supposed office.

Should it be deemed necessary to traverse such allegations, the trial would become encumbered with issues involving the rights of eight different persons to hold certain offices, in a proceeding to which neither of said persons is a party or claims any advantage direct or indirect. The exception to the second paragraph of the return is well taken.

The third paragraph fails to disclose the object of the pleader, but looking to the direct force of the expressions employed, it would appear to question the jurisdiction of the Court on the ground of a supposed difference of local description between the District of Richland and the County of Richland.

The Court takes judicial notice that the locality embraced in the one description, is the same with that embraced in the other, and hence the allegation has no issueable character whatever, and no relevancy or importance to the matter in hand.

The exception to the third paragraph of the respondent's return is well taken.

The respondent will be allowed to amend his return, to conform to foregoing decision.

In accordance with this decision, the paragraphs of the return which had been objected to were ordered to be stricken out. The return as amended was further objected to by the Attorney-General for the reason that it still avers that Thomas P. Walker is Coroner of Richland "District," and not of Richland "County;" that the information having set forth that Thomas P. Walker, was assuming to exercise the functions of Coroner of Richland "County," it was not a proper return to the information to set up that Thomas P. Walker was assuming to exercise the functions of the office of Coroner of Richland "District."

Counsel for the respondent here somewhat petulantly remarked that the Attorney-General had better take the return and write it to suit him-

self, to which the Attorney-General replied that he would be happy to assist the learned counsel to make a proper return to the information, but that considering his relation to the case, he intended to make the learned counsel do their own work, and do it correctly.

His Honor, however, overruled this exception to the return.

The return, as thus amended, and which now consisted of the fourth and fifth sections of the return as originally presented, was allowed to stand.

Mr. Pope, of counsel for respondent, next occupied the attention of His Honor with an argument of about two hours in length.

Mr. Pope was followed by Messrs Tradewell and Fickling. The grounds of defence taken by counsel for respondent were substantially as follows: That the claim of Wm. B. Johnston to the office of Coroner of Richland County went back to the question of the validity of the reconstruction Acts of Congress; that those Acts, one and all, were unconstitutional and void; that upon the cessation of hostilities between the so-called Confederacy and the United States, the State Government existing in South Carolina prior to the rebellion, became at once revived and restored, with all its powers intact; that as a consequence no power existed in the Government of the United States to in any manner change or supersede the old Constitution of 1790 of South Carolina; that Thomas P. Walker having been appointed Coroner under the provisions of the Constitution of 1790, could only be removed from that office by some process deriving its validity from that Constitution.

At the conclusion of the arguments of the Counsel for the respondent, the Attorney-General delivered the following argument:

ARGUMENT OF D. H. CHAMBERLAIN, ESQ., ATTORNEY-GENERAL, ON BEHALF OF
THE STATE.

May it please your Honor: The state of facts out of which the cause now to be heard by your Honor, has sprung, may be briefly stated. The Constitution of the State of South Carolina adopted by a Convention of the people of the State, and ratified by the people thereof at an election held on the 14th, 15th and 16th days of April 1868, provides in Section 30, Article 4, that the qualified electors of each County shall elect a Coroner for the term of four years, and until his successor shall be elected and qualified. [Constitution 1868, Art. 4, Sec. 30.]

In pursuance of this provision of the Constitution, an election for that office, among other offices also provided for by the same Constitution, was held on the 2d and 3d days of June, 1868, [General Orders No. 77, Headquarters Second Military District, Charleston, S. C., April 28, 1868.]

The result of that election was the choice, by the qualified electors of

Richland County, in this State, of William B. Johnston as Coroner of Richland County. [General Orders, No. 122, Headquarters Second Military District, Charleston, S. C., July 1, 1868.]

A certificate of election as Coroner was issued by General Canby, then in Command of the Military District which embraced the State of South Carolina, to the said William B. Johnston. Subsequently by an order of the same military authority, it was directed that "all officers of the States of North Carolina and South Carolina, duly elected and qualified under the Constitutions thereof, and not prohibited from holding office in said States by the third Section of the proposed amendment to the Constitution of the United States, known as Article XIV, will, upon the ratification of the said amendment by the Legislature, be inaugurated without delay, taking the oath of office prescribed by the Constitution of the States in which they have been elected, and otherwise qualifying in conformity with the laws of said States"; and by another Section it is directed that "until the General Assembly of the State of South Carolina shall expressly prescribe by law the duties of the officers chosen or authorized to be chosen at the election held on the 2d and 3d days of June, 1868, the officers so elected shall, after qualification, perform the duties prescribed for said officers by law under the existing provisional government of the State." [General Orders, No. 120, Sections 1 and 7, Headquarters Second Military District, Charleston, S. C., June 30, 1868].

Upon the receipt of his certificate of election as Coroner of Richland County, William B. Johnston proceeded to qualify for that office, giving the bond required by existing laws, taking the oath of office prescribed by the Constitution of the State, and thereupon receiving his commission from the Governor as Coroner of Richland County.

Johnston next made a formal demand upon the late Coroner, Thomas P. Walker, to surrender his office, together with his "Books of Inquests."

To this demand Walker replied, declining to surrender his office and the property pertaining thereto.

Upon information of the action of Walker, as before stated, in my official capacity as Attorney-General of the State, I addressed a communication to Walker, directing him to desist from further assumption of the rights and duties of the office of Coroner of Richland County, at the same time informing him that in case he disregarded my notice, I should take legal measures to enforce the rights of his successor.

To this communication Walker replied, denying my right to address him as Attorney-General of the State, denying that his right to the office of Coroner of Richland District had been terminated either by a constitutional or military appointment of a successor, and announcing his determination to continue to exercise the functions of the office in question.

The next step in the history of this case was an application on my part, in my official capacity, and in behalf of the State, before your Honor, for a rule on Mr. Walker to appear before your Honor to show by what authority he claims to exercise the office of Coroner of Richland County. That rule was granted by your Honor, and I appear before you to-day to maintain the facts set forth in the information, and upon those facts to ask judgment of your Honor by a writ of *ouster* against the respondent, Thomas P. Walker.

Before I proceed, may it please your Honor, to discuss this issue upon its merits, I desire to say a word upon two preliminary questions: 1st. The correctness of the proceeding to which we have resorted in this case--the process by an information or suggestion in the nature of a *quo warranto*. 2d. The right of your Honor to hear and determine this cause under existing laws.

The ancient, original writ of *quo warranto* was a writ of right for or on behalf of the King. It was issuable at the instance of the King's Attorney to try the right of any claimant to any franchise or office. It was originally purely a *civil* proceeding, but owing to the great length of the process, an information, in the nature of a *quo warranto*, was substituted for the old writ of *quo warranto*. This proceeding, by an information in the nature of a *quo warranto*, is the form now in use in England, as well as in this country. The proceeding being derived, as to its form, from the criminal proceeding by information, is in form a *criminal* proceeding; but from the object sought to be effected by it, namely: to try a right to a franchise or office, it becomes, *in substance*, a civil proceeding only. Hence the nominal fine which constituted, for a long period, a part of the judgment in such cases, has passed away, leaving nothing but the civil remedy by writ of *ouster* or *prohibition*. [2 Blackst. 261; 5 Bac. Abr. 173; Petigru's Code 545-546; Cleary vs. DeLeisseline, 1 McCord 33; State vs. DeLeisseline, 1 McCord 47.]

This, may it please your Honor, is the case which we have before us to-day. It is a proceeding by an information in the nature of a *quo warranto* to try the right of Thomas P. Walker to hold and exercise the office of Coroner of Richland County, in the State of South Carolina.

With reference to the second point, the right of your Honor to hear and give judgment in this case, I ask your consideration of the course of legislation in this State upon this subject. In 1712 the Act of the 9th Ann. entitled "An Act to render proceedings upon writs of *mandamus* and informations in the nature of *quo warranto*, more speedy and effectual," was made of force by the Provincial General Assembly of South Carolina. [Stat. S. C., Vol. 2, 568.]

By this Statute the power was given to the Courts of the Province to

hear and determine proceedings upon writs of *mandamus* and informations in the nature of *quo warranto*, but this power could only be exercised by them when sitting as Courts.

In 1818 a Statute was passed, giving power to *Ju'ges* of the Court of Common Pleas and General Sessions to hear and determine motions and to grant original and remedial writs at Chambers. [Stat. S. C., Vol. 7, 321]

In 1859 a Statute was passed creating a Court to be known as a Court of Appeals, and to the Judges of this Court of last resort, were given all the same powers as were then possessed by the Judges of Law and Equity in this State, and among the powers possessed, as we have seen, by the Judges of the Courts of Law and Equity, was the right to hear and determine, at Chambers, proceedings upon writs of *mandamus* and informations in the nature of *quo warranto*.

Under existing laws, therefore, the Judges of the Court of Appeals, or the Court of final resort of this State, are empowered, sitting at Chambers, to hear and determine such causes as we now have before your Honor.

The present Supreme Court of this State, elected in conformity to the provisions of the present Constitution of this State, and of which your Honor is an Associate Judge, is the tribunal which now takes the place of the late Court of Appeals of this State, and I submit this proposition : that under the existing laws of this State, your Honor, sitting here to-day, is clothed with all the rights, possessed of all the powers and armed with all the authority of the late Judges of the Court of Appeals, except so far as those rights and powers are limited or qualified by the provisions of the Constitution of the State.

Now, may it please your Honor, before I go further in the argument, I wish to state as clearly as I am able, the precise legal grounds upon which, I think, this case is to be examined. I submit, therefore, this proposition : *That upon the recognition by the Congress of the United States of the right of South Carolina to representation in Congress, and the admission of her representatives, the State of South Carolina renewed her existence as a State of the Union; and from that moment her people were subject to the Constitution adopted on the 14th, 15th and 16th days of April, 1868, as the supreme law of the State; and that under and along with that Constitution, all existing statutory enactments of the State not previously abrogated or modified by the military authority of the United States, and all existing orders of the military commanders of the State, not inconsistent with the existing Constitution of the State, continued of force and validity, and possess to-day force and validity unless they have been modified or repealed by the Legislative power of the State. In other words,*

may it please your Honor, the people of South Carolina are to-day living under the Constitution formed and adopted in conformity to the Reconstruction Acts of Congress, and the body of Statutes and military orders existing at the date of the re-admission of the State to the Union continue in force, except so far as the same may be inconsistent with the Constitution itself or may have been repealed or modified, or in any manner changed by the legislation of the present General Assembly.

I understand, may it please your Honor, that the respondent in this cause denies the validity of the Constitution recently adopted by the people of this State. I do not understand that he denies that his successor has been regularly and duly elected *under that Constitution*, nor that he has duly qualified for his office and been duly commissioned by the Governor elected under that Constitution. In other words, while denying the legality of the Constitution and laws under which his successor claims to have been elected, he does not deny the regularity of his election *under that Constitution*.

The point, therefore, which the respondent seeks to bring into argument now, is this: Are the Reconstruction Acts of Congress and the proceedings held in conformity to those Acts, constitutional and valid?

Now, may it please your Honor, in my view of this case, that is an issue which is not strictly germane to this discussion. The real point at issue between the State and this respondent, is a much narrower one, namely: Has the respondent's successor in the office of Coroner of Richland County been duly elected; has he qualified and been commissioned in conformity to the present Constitution of the State and to the laws now in force and not inconsistent with that Constitution?

If he has, then my position is, that the term of office of the respondent has expired, and his further assumption of the rights and duties of that office is *unlawful*; a violation of the rights of the people of this State and County. This, I hold to be the true and only real issue to be determined by these proceedings.

But, may it please your Honor, since this argument suggests, if it does not call for a discussion of the validity of the Reconstruction Acts and the proceedings growing of those Acts, I think it proper that I should say a few words on that general question.

In December, 1860, the State of South Carolina by solemn ordinance, assumed and undertook to separate herself from the Union. She renounced her allegiance to the government of the United States; she armed herself to assert her independence; she attacked the forces of the United States within her borders and forcibly expelled the military authority of the United States. She instituted a government foreign and alien to the government of the United States.

A struggle of arms between South Carolina and the United States ensued, and continued for a period of more than four years. That struggle resulted at length in the success of the arms of the United States. South Carolina's armed opposition to the government and laws of the United States was overcome, and the authority, the supreme authority of the United States over the people and territory of South Carolina, was vindicated and established.

What now, at that moment, at the moment when South Carolina's opposition to the United States was subdued, was the legal relation which existed between South Carolina and the United States? Simply, may it please your Honor, the relation of *conquered* to *conqueror*. That and nothing more.

The government which South Carolina had set up was foreign, alien and hostile to the government of the United States. It fell; it perished; it was obliterated. Her Governor was a prisoner, her Judges were disrobed, her legislators were scattered, and every man within her borders who had lifted a hand to aid or support that hostile government held his property, his life, *everything*, at the mercy of the power which had conquered him. The rude hand of war had shattered every institution of the State, and abrogated every law. By the dread abitrament of war, it was decided that the government which South Carolina had sought to establish and maintain in defiance of the Constitution of the United States, was invalid, unlawful, revolutionary and void. South Carolina, her government, her people, were prostrate at the feet of the Union, without government, without laws, without officers, without the faintest semblance or show of State authority or State government. Stated with strictness of language, South Carolina at that moment, *as a State*, had no rights which the United States were bound to respect. I am speaking now purely from a legal point of view. I admit that she had other claims to consideration and mercy. "Blood is thicker than water," and old associations, the ties of race and kindred, the claims of humanity, threw around the people of South Carolina a shield of protection, but *legally* she had forfeited *every right*.

This, then, was the *legal* situation. No law, no authority, no legal power existed at that time in South Carolina, save such as was directly established or directly permitted by the United States.

This posture of affairs was recognized as well by the Executive as the Legislative Department of the Government of the United States.

Under the Presidential plan of Reconstruction, not one step was taken except by the direction or permission of the Government of the United States, as represented by the Executive. The President appointed the Provisional Governor; he prescribed the manner of restoration; he di-

rected that the war debt should be repudiated; that the Constitutional Amendment abolishing slavery should be ratified by the Legislature. He prescribed, on behalf of the United States, the manner and the terms of the restoration of the State Government and the re-admission of the reconstructed States to the Union.

The recognition of the absolute control of the United States over South Carolina was complete and undeniable.

Unfortunately, however, for the peace of the country, the Presidential plan of reconstruction was not in harmony with the views of the Legislative branch of the Government of the United States. Congress, with whom alone the final decision of the terms of reconstruction rested, disapproved and rejected the work done by the people of South Carolina under the direction of the President of the United States. But, whatever the merits or faults of the Presidential plan—and I carefully lay out of view in this discussion, all consideration of the political issues involved—the Presidential plan of reconstruction rested for all its validity and all its legality upon this simple legal proposition; that there existed at that time in South Carolina, no legal Government whatever; and that whatever steps were taken to set up and establish a State Government, must be taken by the express *authority, sanction and permission* of the Government of the United States; that no semblance of legality could attach to any Government set up in South Carolina, unless that Government should receive the approval and sanction of the Government of the United States.

The Presidential plan of reconstruction failed to meet the approval of the law-making branch of the general Government

Now, may it please your Honor, I pass over the period which elapsed between the first unsuccessful steps on the part of the Executive to reconstruct and restore the State of South Carolina to the Union, and the final adoption of the plan of reconstruction known as the Congressional plan. We may deplore the failure of the Presidential plan, or we may hail its rejection by Congress as the dawn of a new era for our country, the era of justice and equal rights for all men, without distinction and without exception. Those are *political* questions with which we have no concern *here to-day*.

I come now, may it please your Honor, to the time when the plan of reconstruction now known as the Congressional plan of reconstruction, was initiated by the Congress of the United States. The work of reconstruction which had been accomplished under the auspices of the President remained unfinished, unsanctioned by Congress and unrecognized by the Legislative branch of the Government.

At length, in March, 1867, the Congress of the United States passed

an Act entitled "An Act to provide for the more efficient government of the rebel States."

This Act declares in explicit terms, that no legal State governments now exist in certain States, and among these in South Carolina; and proceeds to declare in what manner the several States specified shall be governed and upon what conditions they shall finally be restored to the Union, and specially enacts that "until such States are by law admitted to representation in the Congress of the United States, any civil government which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control or supersede the same."

This, may it please your Honor, I contend, is a strict legal statement of the condition of South Carolina when that Act was passed. It asserts precisely what the President had previously asserted when he first commenced the work of reconstruction in this State. It claims no more authority for the Government of the United States over the lately rebellious States, than the President claimed in 1865. It commences and proceeds upon precisely the same hypothesis, upon the same legal foundation, to wit: That the rebellion had destroyed the State governments which existed *during* the rebellion, and that no governments nor laws therein could have any legal force or effect until or unless approved, sanctioned or permitted by the paramount authority of the United States. If the authority existed for the President to fix *one single* condition of restoration to the Union, then the same authority existed for fixing other conditions. I am not speaking of the wisdom or expediency of any plan of reconstruction. I leave all that out of view; and I say that if, at the close of the rebellion, the legal relations of South Carolina to the Union were such as to give to the President the right to fix *one* condition to the restoration of South Carolina to civil government, then the same right existed for Congress to fix other conditions; just *such* conditions, just *so many* conditions as might seem to the government to be wise, prudent or desirable. Grant the right to maintain military rule in South Carolina until the Constitutional Amendment abolishing Slavery should be adopted, and you grant the right to maintain military rule until any other proposed Amendment, or any other action on the part of the people of the State should be adopted. Outside of this, it is merely a political question; a question of prudence, of statesmanship, of public policy. I am not here to-day, as I have already said, to maintain or to deny the wisdom of any plan of reconstruction; but I am here to discuss the *legal* relations of South Carolina to the General Government, and the powers of the general government to fix the conditions of a restoration of the people of the State to civil government and to the Union. And I confi-

dently lay down the proposition here now, before your Honor, that under any theory or plan of reconstruction, it has been admitted and claimed by both the branches of the General Government which have differed most widely in their views of the question as one of public policy, that legally and constitutionally the general government has complete and unrestricted power over the whole question. The President in his plan of reconstruction, claimed and exercised such power; Congress, in its plan of reconstruction, has claimed and exercised the same power.

And all this is but the necessary legal result of the relations which existed between the *conquered* rebellious State of South Carolina and the *conquering* Government of the United States.

We have discovered, therefore, may it please your Honor, I think, the *legal, constitutional* grounds upon which *any* plan of reconstruction must rest and proceed. It results from the fact that South Carolina attempted to set up here a government, alien, foreign and hostile to the Government of the United States; that as the result of the conflict which ensued, South Carolina with her pretended government was *conquered*, conquered by the irresistible arms of the military power of the United States. That victory of the arms of the Union left South Carolina, as a necessary consequence, *without government*; and no State government could ever originate or gain the least legal validity except by the sanction of the General Government.

The law-making power of the government refused its sanction to the government set up in accordance with the Presidential plan of reconstruction, and as a result, South Carolina was still without any legal or valid State government.

In fact, may it please your Honor, it was never asserted or claimed by the Executive that his power alone, extended to the validation of the State governments set up under his advice and direction, or that anything short of the formal sanction of the work of reconstruction by Congress, could entitle a State to restoration to the Union.

Congress in the exercise of its discretion, and in the exercise of the same general powers which the President had invoked in taking the first steps of reconstruction in 1865, passed the Act of March 2, 1867.

It is true that this Act failed to receive the Executive approval, but it was passed in the constitutional manner *over* the Executive veto. I assume, may it please your Honor, that no one will pretend that that Act possesses any less legal validity and force on account of the fact that it was passed over a veto. That Act of March 2, 1867, and the supplementary Acts of March 23, and of July 19, of the same year, and of March 11, 1868, were all constitutionally passed by a vote of two-thirds of each House of Congress over the Executive veto.

Those Acts, one and all, are *laws of the land*, unrepealed, constitutionally enacted. They have never been pronounced unconstitutional by the judicial branch of the general government. They have been of full force and validity from the date of their passage until to-day. It is true that the Executive has pronounced them unconstitutional, and that he still maintains that position, but I do not think that any one will claim; I do not think that the learned counsel for the respondent will claim, that the opinion of the Executive, however often proclaimed or honestly entertained, can affect the validity of an Act of Congress duly and constitutionally passed.

It is true, too, that many private citizens of distinguished ability and influence, among them I suppose my learned friends, the counsel for the respondent, hold that these Acts are unconstitutional. But I do not think that my learned friends will claim that any opinions of distinguished citizens, however eminent or patriotic, not even the opinions of an entire political party, can destroy the force or validity of these Acts.

No, may it please your Honor, whatever men may say or think, whatever the learned counsel for the respondent, whatever you or I may think or say, these Acts are *law* to-day. Every man owes obedience to them, from the Chief Executive of the nation, down to the humblest man within our borders. Future legislators may repeal them; the Judicial tribunal of the country may declare them unconstitutional; but until repealed by the same power which enacted them or set aside by decision of the constitutional tribunal of the Supreme Court of the United States, *they are laws*; laws to be *respected*, to be *obeyed*; aye, may it please your Honor, to be *enforced*, to be *executed*.

And now, may it please your Honor, we have arrived at this point in the progress of our argument; we have seen that the Acts of Congress, under and by virtue of which this proceeding and cause which we are discussing to-day has arisen, were passed in pursuance of a clear and unquestionable right on the part of the Government of the United States, to fix such conditions of re-admission for South Carolina as should be deemed expedient or desirable, and that, tried by every legal test, they are *constitutional laws*.

Now, may it please your Honor, the Acts of Congress of which I have spoken, mainly prescribe certain conditions of re-admission to the Union, having reference mainly to the classes of persons entitled to vote on questions arising prior to the re-admission, and to the mode and manner of conducting the elections rendered necessary by the conditions of re-admission.

I do not think it necessary for me to occupy any time, may it please your Honor, in proving that the present Constitution of this State has

been framed in strict conformity to the Reconstruction Acts of Congress. I shall content myself upon that point with challenging any one to point out any deviation from the strict letter of the law. The present Constitution is the legitimate result of the Reconstruction Acts of Congress. It has been submitted to the scrutiny of the Congress of the United States; has been by them approved. South Carolina has been again admitted to representation in the Congress of the United States, and to a full share in all the rights, privileges and immunities of a State of this Union.

Here, then, may it please your Honor, we take our stand. We have received a rule of conduct to guide us in our way to a restoration to the Union. We have followed that rule. Our action has been accepted and approved, and upon a valid constitutional and legal basis we take our place again in the great sisterhood of American States. Old things have passed away; the lost has been restored; the rebellious has become loyal; the provisional has become permanent. The iron hand of military rule has been withdrawn, and laws long silent amidst arms again resume their mild and peaceful sway. So may it be! So *let it be!*

I am aware, may it please your Honor, that I have occupied considerable time in the discussion of a branch of the subject which I stated at the outset, I did not consider as directly or necessarily involved in the decision of the issue now raised. But as the preliminaries of this proceeding had indicated to me that our right—your right and mine, in our official stations, and the right of the entire people of the State, acting under our present Constitution—was to be drawn in question, I desired to present somewhat fully, and with as much clearness as I was able, the exact legal *status* of the present government of this State; the grounds of law upon which we propose to *stand* and to *act*.

Taking, then, our present State Constitution as a starting point, I have already shown you, by the proper documentary evidence, that the claim of William B. Johnston to the office of Coroner of Richland County is perfect and complete.

There is but one other branch of the discussion to which I desire to direct your further attention.

By the terms of General Orders No. 120, published from the Headquarters of the Second Military District, and dated June 30, 1868, it is directed that "all officers of the States of North Carolina and South Carolina, duly elected and qualified under the Constitutions thereof, and not prohibited from holding office in said States by the third Section of the proposed amendment to the Constitution of the United States, known as Article XIV, will, upon the ratification of the said amendment by the

Legislature, be inaugurated without delay, taking the oath of office prescribed by the Constitutions of the States in which they have been elected, and otherwise qualifying in conformity with the laws of the said States." By the terms of Section 7 of the same order, it is further directed that "until the General Assembly of the State of South Carolina shall expressly prescribe by law the duties of the Sheriffs, Coroners and Clerks of Courts chosen, or authorized to be chosen, at the election held in said State on the 2d and 3d of June, 1868, the officers so elected shall, after qualification, perform the duties prescribed for said officers by law under the existing Provisional Government of the State."

This order, dated and published prior to the date of re-admission of the State to the Union, directs the doing and prescribes the manner of doing certain Acts and things *after* the State shall have been restored to the Union and to civil rule, and *after* the new State Constitution shall have become operative and the General Assembly shall have met.

This question, therefore, arises: can such a military order be of force after the rule of civil law has been restored? And this question fairly arises upon the record of this case. For it was in conformity to this order of the military commander that William B. Johnston qualified and entered upon the duties of his office as Coroner.

I have already stated in a former part of this argument, that I held that under and along with the present Constitution of this State, all existing statutory enactments of the State, not previously abrogated or modified by the military authority of the United States, and all existing orders of the military commanders of the State not inconsistent with the existing Constitution of the State, continued of force and validity, and possessed to-day force and validity, unless they have since been modified or repealed by the legislative power of the State.

In support of this position, I desire to direct your Honor's attention to a very satisfactory case which is found in the 20 Howard, 176; the case of *Leitensdorfer et al. vs. Webb*, in which the principle of law which I have laid down finds illustration and statement.

This was a case which was brought up by writ of error, from the Supreme Court of the Territory of New Mexico.

I quote from the opinion of the Court, as delivered by Mr. Justice Daniel. "Upon the acquisition in the year 1846, by the arms of the United States, of the Territory of New Mexico, the civil government of this Territory having been overthrown, the officer, General Kearney, holding possession for the United States, in virtue of the power of conquest and occupancy, and in obedience to the duty of maintaining the security of the inhabitants in their persons and property, ordained under the sanction and authority of the United States, a provisional or tem-

porary government for the acquired Territory. By this substitution of a new supremacy, although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the government of their former allegiance, or those arising from contract or usage, *remained in full force and unchanged except so far as they were, in their nature and character, found to be in conflict with the Constitution and laws of the United States, or with any regulations which the conquering and occupying authority should ordain.* Amongst the consequences which would be necessarily incident to the change of sovereignty, would be the appointment or control of the agents by whom and the modes in which the government of the occupant shall be administered—this result being indispensable in order to secure the object for which such a government is usually established. This is the principle of the law of nations, as expounded by the highest authorities."

Again, the Court say in the same case, "of the validity of the Ordinances of the Provisional Government there is made no question with respect to the period during which the territory was held by the United States as occupying conqueror; and it would seem to admit of no doubt that during the period of their valid existence and operation, these Ordinances must have displaced and superseded every previous institution of the vanquished or deposed political power which was incompatible with them. But it has been contended that whatever may have been the rights of the occupying conqueror as such, these have all terminated by the termination of the belligerent attitude of the parties, and that with the close of the contest every institution which had been overthrown or suspended would be revived and re-established. The fallacy of this pretension is exposed by the fact that the territory never was relinquished by the conqueror, nor restored to its original condition or allegiance, but was retained by the occupant until possession was matured into absolute, permanent dominion and sovereignty, and this, too, under the settled purpose of the United States never to relinquish the possession acquired by arms. We conclude, therefore, that the Ordinances and institutions of the Provisional Government would be revoked or modified by the United States alone, either by direct legislation on the part of Congress, or by that of the Territorial Government in the exercise of powers delegated by Congress; that no power whatever, incompatible with the Constitution or laws of the United States, or with the authority of the Provisional Government, was retained by the Mexican Government, or was revived under that Government, from the period at which the possession passed to the authorities of the United States."

This case, may it please your Honor, I hold to be, *mutatis mutandis*,

strictly applicable to the present condition of our State, and to fully support the doctrine which I have advanced in this case.

Upon the restoration of civil rule in this State, all previously-existing laws of the Provisional Government, whether existing in the form of the previous statutes of the State or of military orders affecting the rights of person or property, continued in force, and can only be repealed or abrogated by the direct action of the Legislature of this State. The Order of June 30, 1868, from the military commander of this State, so far as it is now applicable, and not inconsistent with the present Constitution of the State, is in force this day; and so far as it affected the manner of qualification of the Coroner of Richland County, or so far as it affects his duties and powers as Coroner to-day, is in full force. In conforming, therefore, to the Order of June 30, 1868, the newly-elected Coroner of Richland County *completed*, in a legal manner, his right and title to the office.

May it please your Honor, I am not aware that there is anything further which I ought to urge on behalf of the State, in this proceeding. I do not forget that I have made no reply to the greater part of the remarks, I cannot say arguments, which have been addressed to you by the learned counsel for the respondent. However complete the answer which might be made to the political aspersions which have been so openly and persistently cast in this discussion upon those who are connected with the present State Government of South Carolina; however strong the temptation may be to follow the style and course of remark which the learned counsel opposed to me have adopted, I shall not yield to it for one moment. If there be honor or fame in degrading a judicial issue and a judicial tribunal into an occasion for indulging in language and reflections appropriate to a discussion of the issues of a political campaign, I do not seek it. I am not now at the hustings nor on the stump; but I am in a judicial presence, and I will not so far forget the teachings of my youth, my own convictions of propriety, or the dignity of my official station, as to allow myself to be led into the utterance of a single word which shall tend to introduce into this discussion those political feelings which ought to be silenced when grave legal issues are examined. I bid the learned counsel for the respondent, therefore, welcome to all the glory which can be derived from an attempt to degrade and embitter these discussions to-day by considerations which appeal only to the political prejudices and divisions of the hour.

I have endeavored, may it please your Honor, to show you,

1st. That the remedy for the wrongful usurpation of the office of Coroner of Richland County, by Thomas P. Walker, is correctly and appropriately sought in the proceedings which we have here instituted on be-

half of the State, by an information or suggestion in the nature of a *quo warranto*.

2d. That your Honor, as Associate Justice of the Supreme Court of this State, has authority, sitting in Chambers, to hear and give judgment on this proceeding.

3d. That agreeably to the provisions of the Constitution of this State and the orders of the commanding General, William B. Johnston was duly elected Coroner of Richland County; that the said William B. Johnston duly qualified in accordance with existing laws and in conformity to the orders of the commanding General; that the said William B. Johnston received a commission in due form from the Governor of the State; that the said William B. Johnston made due demand upon the then Coroner of Richland County, Thomas P. Walker, to surrender to him the said office, together with his "Books of Inquests;" that the said Thomas P. Walker then refused and has since continued to refuse to surrender and vacate the office of Coroner, or to turn over to his successor in office the property of the office.

4th. That the office of Coroner of Richland County is an office established by the Constitution of this State, adopted in conformity to the Reconstruction Acts of Congress.

5th. That the Reconstruction Acts of the Congress of the United States were constitutional and valid Acts, of full legal force and effect until they became inapplicable by their own limitation.

6th. That all the conditions prescribed by the Reconstruction Acts for the re-admission of South Carolina to the Union, have been satisfied by the people of the State; and that her Constitution having been approved by the Congress of the United States and her Representatives admitted to seats in Congress, her present State government is, in all respects, a constitutional and valid government of the State of South Carolina.

7th. That the General Order of June 30, 1868, prescribing the mode of qualification of Coroners and other officers, and the duties of such officers, is valid and legal as a part of the laws of South Carolina, until such time as the same shall be abrogated, modified or repealed by the action of the General Assembly of the State.

8th. That William B. Johnston, having been duly elected, qualified and commissioned as Coroner of Richland County has a complete legal claim and title to the office aforesaid.

9th. That the term of office of Thomas P. Walker having expired by the constitutional election and qualification of his successor, his further holding of the office and assumption of its duties, is a wrongful usurpation, in violation of law; and in derogation of the rights of the people of

this State, and especially of the rights of William B. Johnston, his lawful successor.

This, may it please your Honor, is the case which we present on behalf of the State, against this respondent; and when we consider the issues which we have found to be involved, more or less directly, this proceeding loses its seeming insignificance, and is seen to be an issue which deeply affects the peace of this community, the validity and force of our laws, and the permanence and dignity of our government. Viewed in this light, it is an issue which touches the validity, the stability, the success and the permanence of every step taken, from the day when Lee and Johnston furled their banners, those hateful symbols of an unhallowed rebellion, down to the present hour.

Decide for this Respondent, may it please your Honor, and you put the seal of your condemnation upon that great system of laws which has been developed in order to obliterate and repair the cruel wastes of war, to bind up the wounds inflicted by rebellion, and to ordain and establish Peace, Justice and good will in South Carolina.

Decide for this Respondent, and you brand as a usurper every man who now holds position in virtue of the present Constitution of this State; and you brand the Constitution under which we now act as an illegitimate, unlawful and revolutionary work.

Aye, may it please your Honor, decide for this Respondent, and you break down the Bench itself on which you now sit.

May it please your Honor, in the name of the State we ask *judgment* against this respondent. We ask it for the peace of our community, for the dignity of our government, for the supremacy of our laws.

It only remains for me, therefore, to move your Honor that a writ of *ouster* do issue against this respondent, Thomas P. Walker, commanding him, the said Thomas P. Walker, to vacate forthwith, and under an appropriate penalty therein to be inserted, the office of Coroner of Richland County; to surrender the property of that office to William B. Johnston, his lawful successor, and henceforth to abstain from doing and performing, or assuming or pretending to do or perform, any and all acts pertaining to the said office.

OPINION OF THE COURT.

CHAMBERS SUPREME COURT, COLUMBIA, August, 15, 1868.

THE STATE EX REL. THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

WILLARD, ASSOCIATE JUSTICE.

The Attorney-General, in behalf of the State, has filed a suggestion and obtained a rule to show cause for the purpose of ousting the respondent from the office of Coroner of Richland County. The respondent has

appeared and made claim to exercise and enjoy the office in question, under an appointment to that office made by the Governor of the State, and has produced a commission therefor, bearing date the 21st day of December, 1864. He claims that by the tenure under which he holds said office his term will not expire until the 21st day of December, 1868. On the other hand, it is claimed in behalf of the State, that William B. Johnston is the lawful Coroner of Richland County, and holds under commission from the present Governor, and has duly qualified, and has demanded of the respondent possession of all matters appertaining to said office, and that the respondent has refused to deliver the same to said Johnston.

The question at issue is the right of the respondent to hold and exercise the office of Coroner. According to the case presented, in behalf of the State, the termination of the right of the respondent to hold the office in question depends upon the due election or appointment, as the case may be, of Johnston, and his having qualified therefor under the provisions of the Constitution of the State.

The title by which Johnston claims the office in question having arisen while the State was under military government, in pursuance of the authority of the Acts of Congress commonly known as the Acts of Reconstruction, it is contended by the counsel for the respondent that such title is nugatory and void, the authority by which such military government acted being in derogation of the rights of South Carolina as a State under the Constitution of the United States. The precise question presented before the Court, as involving the merits of the present controversy, is whether the supreme authority invested under the Acts of Congress with powers of military government over persons and property within the State of South Carolina, regarded as a part of the Second Military District, could rightfully terminate the right of the respondent to hold the office in question, and vest in the claimant, Johnston, a right and title to said office, which can be recognized under the existing Constitution and laws of the State. It is not denied that Congress sought to confer such power, and that the commanding officer representing the military authority within such Military District has assumed its exercise.

The practice established under the statutes of the State authorizes a Judge of the Appellate Court to hear and determine, at chambers, questions of this character, and to award such judgment as the nature of the case may demand. The grounds of this jurisdiction need not be stated, as they were not the subject of contest in this case.

The issue involved in this case is one of momentous importance, both as affecting the validity of acts of public authority, to which legal interests of great magnitude, both public and private, have become conformed, and as the first appeal to the Judiciary, under the present Constitution of the State, upon grounds that have formed the subject of exciting forensic discussion, and which can only command acquiescence when fairly brought to the test of established principles of constitutional and statutory construction.

In view of the present nature of the question at issue, it is due that the position assumed by the respondent's counsel should be succinctly stated. The foundation of the title of the respondent is claimed to be the Constitution of this State, adopted June 3, 1790, and the amend-

ments thereof, and the statutes passed in pursuance of such authority. It is contended that he is entitled to the enjoyment of the full term of four years from his appointment and commission, on the grounds : First, that by the tenure of his office, he has an indefeasible right or property in the same for the full term originally created, as against any public authority whatsoever ; and, second, that no rightful authority existed, or could exist, under any Act of Congress, competent to terminate the term of office created by and under the Constitution and laws of South Carolina.

It is argued that South Carolina is, and has been, from a time earlier than the Constitution of the United States, a sovereign ; that, by a delegation of express powers, incapable, by its terms, of being enlarged by implication, she parted with to the United States no rights in derogation of her sovereignty ; that her ancient Constitution and laws ever have been, and are, the only tests of validity and legality in relation to all matters of internal government, and afford the only electoral basis upon which rightful authority can stand within the State ; that, as a State, she is, and always has been, unaffected in her legal rights and immunities, both as sovereign and under the Constitution of the United States, by the recent rebellion and its legal and political results and consequences ; that the rebellion was a matter between the citizens of the State and the Federal authority that did not concern or affect her rights as a State ; that the only consequence that could rightfully follow the successful arms of the United States, was the arrest and punishment of the individuals engaged in rebellion, under the Constitution of the United States, as individual offenders ; that the constitutional relations of the State to the United States remaining unchanged, notwithstanding the war, it was not competent for Congress to prescribe the calling of a Convention to frame for us a Constitution and form of government, nor to prescribe and define an electoral basis unknown to her Constitution, in furtherance of such purpose.

It was also contended that the Constitution of 1865, and the terms of adjustment imposed by the President of the United States, were accepted under a duress of circumstances, leaving the State without freedom to accept or reject them.

Considering the first ground presented by the argument, namely : That the tenure of the office of Coroner was unalterably placed beyond the power of the State to destroy or diminish it, it is clearly a misconception of the nature of an office, as existing under our system of government. The office in question was not an estate held by grant or patent, but a power held by commission of, and from, the people for whose sake it was enjoyed, upon certain prescribed terms and conditions, and by whom the authority delegated could be withdrawn, whenever the public welfare—the *suprema lex*—demanded its withdrawal.

The remaining ground of argument must be examined by the light of the powers conferred upon Congress, and inhibited to the States by the Constitution of the United States, and gives rise to two questions : First, whether the State, as such, became, by the existence of the war of rebellion, subjected to the war powers lodged in the Government of the United States ; and, second, whether by the terms and proper effect of

that instrument, those powers were so limited as to place beyond their sphere the rights and immunities claimed for South Carolina in this case.

Could, therefore, the war powers of the United States be properly directed against a State as such? These powers, as they are vested in Congress, relate to declaring war, granting letters-of-marque and reprisal, and making rules concerning captures on land and water; (Article I, Section 8), raising and supporting armies, providing and maintaining a navy, making rules for the Government and regulation of the land and naval forces, providing for calling forth the militia to execute the laws of the Union, suppress insurrection and repel invasion, providing for organizing, arming and disciplining the militia, and for governing such part of them as might be employed in the service of the United States, with certain reservations to the States as to the appointment of militia officers and training the militia when not in the service of the United States, suspending the writ of habeas corpus in cases of rebellion and insurrection, when the public safety might require it. (Section 9.) The powers, as vested in the President of the United States, are that he shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States (Article IV, Section 4.) In addition to these is the general grant of power, applicable alike to its civil and military functions, implied by the declaration of the objects of the establishment of the Union—namely, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to the nation. (Preamble.) To this should be added the right to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof. (Article I, Section 8.) This ample charter of war powers, as full and complete as that enjoyed by any Government recognized as possessing national attributes, confers upon the Federal Government power to determine as to the causes and conditions upon which these powers should be put in exercise, the ends towards which they should be addressed, and the means appropriate to the attainment of those ends, so long as they belong to the class known as war powers.

The question then arises, can a State become the proper subject of the exercise of these war powers? The general proposition bearing upon this subject is that any organized community, capable of creating and wielding military power, can be both actor and subject in relation to the exercise of such powers. The States of the Union having at their command organized militia, capable of raising, arming and maintaining troops, and procuring munitions and supplies of war, are clearly competent to engage in war, except so far as that competency is interfered with by the Constitution of the United States. That instrument acts only upon their legal capacity to make war, not upon their power to maintain war when once lawfully made. It recognizes, in certain cases, the right of a State to defend itself by means belonging to war, when placed in jeopardy, and time is not allowed to invoke the military aid of the United States. In a word, if any case can arise under the Constitution where the Government of the nation would be justified in bring-

ing the constitutional powers of the Government to bear upon the State for the accomplishment of a lawful end, resisted by the State, the necessity of a resort to arms would arise from the very fact that the subject of these powers in the given case was an organized community, possessed inherently of military powers. Turning, then, to the Constitution, we find that such a case may arise, but is most likely to occur under the provisions inhibiting certain powers to the States, namely: that to enter into any treaty alliance, or confederation, or grant letters of marque and reprisal, (Article 1, Section 10.) It is not enough to say that the Constitution executes itself by instantly annulling such transactions, for the prohibited alliance or confederation might exist for the very purpose of destroying that Constitution—as was the case in the war of rebellion; nor would the legal invalidity of letters of marque and reprisal accomplish that protection to commerce intended to be secured by the constitutional provision under consideration. It is, therefore, free from doubt that a State may, consistently with the Constitution, place herself in such a position as to become rightfully subject to the war powers of the nation.

This leads to the inquiry whether the State of South Carolina occupied such an attitude to the Government of the United States. She passed as a State, an ordinance of secession that was the immediate cause of the war; she made an alliance and confederacy with certain other States, in violation of the express prohibition of the Constitution. With her confederates, she made war, in the fullest sense, against the nation; raised, armed and maintained, at the public cost, armies and a navy, to oppose the military power of the United States. She put in commission officers to command her armies and navies, and imposed taxes for the maintenance of a State of war. All this was done by the State as an individual, and as a member of a confederation of States; and thus assumed an attitude that rendered it necessary that the United States should relinquish the Union and the Constitution, or put in operation all her rights and energies as a sovereign, capable of making and maintaining war.

Having this right, the next question that arises is, Did she exercise it? All the departments of the government have, each in its proper sphere, recognized the fact that the war of rebellion was carried on against States and not against the individuals composing those States, exclusive of the participation of the States themselves.

President Lincoln, by his proclamation of August 16, 1861, declares that an insurrection against the laws, Constitution and Government of the United States had broken out in certain States, including South Carolina; that he had called forth the militia, under the Act of February 28, 1795, to suppress such insurrection, and to cause the laws to be executed, and that the insurgents had failed to disperse; that other States had since become involved therein. He states: "And whereas, the insurgents in all the said States claim to act under the authority thereof, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof, in which such combination exist; nor has such insurrection been suppressed by said States," he, therefore, declares that the inhabitants of said States, excepting West Virginia, are in a state of in-

urrection against the United States, and that all commercial intercourse between them and other parts of the United States is unlawful, and certain property was declared subject to forfeiture. This was an Executive declaration, recognizing the fact that the rebellion had developed itself as a rebellion of certain States as organized communities; hence he does not distinguish, in dealing with them, between citizens of those States who were implicated personally in the rebellion and those which abstained from such action; but treats all inhabitants alike, as necessarily was the case where the State of which they were members had assumed the attitude of war.

The same general conclusions were embraced in the joint resolution of the Senate and House of Representatives, adopted July 22, 1861. The rebellion was there characterized as a war directed against the Constitution and Government of the United States, and the object of that war, on the part of the United States, was declared to be to defend and maintain the supremacy of the Constitution, and to preserve the Union, with all the dignity, equality and rights of the several States unimpaired, and that as soon as these objects were accomplished, the war ought to cease.

The Supreme Court had the question of the status of the rebellion before them in 2 Black, 635, and regarded the war as formal and justified by the circumstances, as adequately declared under the provisions of the Act of July 13, 1861, and as a war against States organized in rebellion, and held that the laws of war relative to capture and condemnation were operative. Thus it will be seen that the State of South Carolina, capable of being placed in such a relation to the General Government as to involve herself in the consequences and effects of war with that power, actually occupied that position as the consequence of her own action; that the Government put in exercise its constitutional powers, and continued to exercise the same until she re-entered the Union, under her present Constitution, having complied with the terms and conditions exacted by the war power of the government, as essential to the accomplishment of the objects for which the war was waged.

It is not within the competency of a State tribunal to declare that the objects sought in the war were not legitimate and the means without the Constitution, so long as they properly belong to the class of war powers. The United States having entered and reduced the State in the right of conquerors, succeeded, by the laws of war, to the local powers of government displaced by martial authority, and while so invested with as full and legitimate local authority, under the laws of war, as the State had enjoyed under the Constitution previous to the war, and a termination not having been put to the state of war by the concurrent action of the constitutional powers, to whom belonged the restoration of peace and the stipulation of the terms and conditions on which it should depend, passed certain ordinances—among which was one providing for the calling of a Convention of the people to re-frame the government of the State—and prescribing the electoral basis upon which such government should exist. With the policy and necessity of such legislation, this Court has no concern, nor can it rightfully determine whether the other conditions of pacification were necessary or appropriate. It can look no farther than to see that the powers exercised are of the class con-

ferred upon the United States; nor can it find any ground to affirm that Congress has travelled beyond the scope of these powers.

The election of Johnston, being conformable to the authority derived from the Acts of Reconstruction, was valid, and the declaration of the result completed a title to the office in question, subject to an act to be performed by himself, namely: the taking of the oath of qualification. It was competent for him to demand, under the Constitution of the State, the possession of the office upon the principles laid down by the Supreme Court of the United States, in the case of *Litensdorfer vs. Webb*, 20 Howard, 176.

The State is entitled to judgment of *ouster* against the respondent.

Upon the delivery of the foregoing opinion of His Honor Judge Willard, the Attorney-General moved that judgment be issued against the Respondent in the following form, which motion was immediately granted.

JUDGMENT.

THE STATE EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

CHAMBERS OF SUPREME COURT, S. C.,

August 17, 1868.

Upon hearing the arguments in the above-named proceeding, and upon mature consideration thereof, it is ordered, that the respondent, Thomas P. Walker, do forthwith, and upon pain of contempt of this Court, vacate the office of Coroner of Richland County; that he, the said Thomas P. Walker, do forthwith deliver to William B. Johnston, of the County aforesaid, all and singular the books and property of the said office of Coroner of the County aforesaid, and that henceforth, he, the said Thomas P. Walker, do abstain from doing or performing, or assuming or pretending to do or perform, any act or acts whatsoever, in any manner pertaining to the office of Coroner as aforesaid.

Let a copy of this judgment be served upon the said respondent, Thomas P. Walker.

Witness, my hand, this 17th day of August, 1868.

A. J. WILLARD, A. J.,

Supreme Court of the State of South Carolina.

Upon the conclusion of the delivery of the foregoing opinion, counsel for the respondent gave notice of an appeal from the decision of His Honor Judge Willard to the Supreme Court of the State.

On the 21st instant the Attorney-General applied for a Rule on the respondent to show cause why a writ of attachment for contempt should not issue against him in virtue of the foregoing judgment. The Rule was granted and made returnable on the 22d instant.

THE STATE EX RELATIONE THE ATTORNEY-GENERAL VS. THOMAS P. WALKER.

CHAMBER SUPREME COURT OF STATE OF SOUTH CAROLINA, }

21st August, 1868. }

Upon motion of the Attorney-General, supported by due evidence, a

Rule is now granted, directing the respondent, Thomas P. Walker, to appear before me on to-morrow, the 22d day of August, 1868, to shew cause why a writ of attachment for contempt of this Court should not issue against him, the said Thomas P. Walker, in virtue of a judgment of this Court, rendered on the 17th day of August, 1868.

A. J. WILLARD,

Associate Justice Supreme Court of State of South Carolina.

On the 22d, the respondent appeared by counsel and made the following return to the Rule :

THOMAS P. WALKER *ads.* THE STATE *EX RELATIONE* THE ATTORNEY-GENERAL.

The respondent, Thomas P. Walker, upon whom a Rule to show cause why he should not be attached for contempt in not obeying the mandate of the Court in the above stated case, has been served, for cause shows that he has served the Judge and the Attorney-General with notice of appeal from the decision of His Honor Judge Willard, and he respectfully submits that such notice of appeal operates as a *superseas* or suspends the execution of the judgment until the hearing of the appeal, and that the respondent is not in contempt.

(Signed)

THOMAS P. WALKER.

Counsel for the respondent also presented the following

GROUND OFS OF APPEAL.

THOMAS P. WALKER *ads.* THE STATE *EX RELATIONE* THE ATTORNEY-GENERAL.

AT CHAMBERS, COLUMBIA.

The respondent, Thomas P. Walker, hereby gives notice that he appeals from the judgment of ouster in this case, rendered by His Honor A. J. Willard, Associate Justice, on the 17th day of August instant, and will move the Supreme Court of the State of South Carolina, at their next sittings in Columbia, to reverse the same on the following grounds :

1. Because it is respectfully submitted that the said Thomas P. Walker is Coroner of Richland District under the Constitution of the State of South Carolina, ordained and established by the people thereof on the 3d day of June, Anno Domini 1790, and the amendments thereto subsequently ordained and established, and in pursuance of the Acts of the Legislature of the said State, passed and ratified under the authority of the said Constitution, and the amendments thereto, which said Constitution and amendments and Acts of Assembly are in accordance with the authority of the Constitution of the United States.

2. Because the said Thomas P. Walker having been duly appointed as aforesaid to hold the office of Coroner for four years, and until his successor should be appointed (which term has not expired), that the said William B. Johnston has not been lawfully appointed such successor, having been elected under an instrument purporting to be the Constitution of the said State of South Carolina, which said supposed Constitution is in conflict with the provisions of the Constitution of the United States, and is, therefore, to all intents and purposes null and void, and

the election of the said William B. Johnston under the same is also null and void.

(Signed)

(Signed)

JAMES D. TRADEWELL,

FICKLING & POPE,

Attorneys for Respondent.

AUGUST 19th, 1868.

The question raised of the effect of the appeal taken was argued on the 22d instant, by Messrs. Fickling & Pope on the part of the respondent, and the Attorney-General on behalf of the State.

On the 25th instant, His Honor Judge Willard, rendered the following

OPINION.

THE STATE EX REL. ATTORNEY-GENERAL VS. THOMAS P. WALKER.

A. J. WILLARD, ASSOCIATE JUSTICE.

The Attorney-General has applied for an attachment against the respondent for contempt, alleging a refusal on his part to comply with the terms of the judgment of *ouster* heretofore rendered against him for usurping and unlawfully exercising the office of Coroner of Richland County. The only question raised on the argument was whether the appeal which has been taken from the judgment operates as a *supersedeas* in reference to the remedial action sought in the present proceeding.

The remedy afforded under the laws of this State in cases in the nature of *quo warranto* is based upon the Statute of 9 Anne C. 20, made of force by Sec. 11 of the Act of December 12, 1712, settling the mode of pleading, and of disposing of issues of fact arising, and the form of judgment appropriate to the case. It authorizes a judgment of *ouster* and also the imposition of a fine for the usurpation, as well as costs to the prevailing party.

The right of granting the writs of prohibition, *mandamus* and *quo warranto*, was conferred upon the Judges of the Court of General Sessions and Common Pleas at their Chambers, in the same manner and with the same effect as if done in open Court, and the right of appeal to the constitutional Court of Appeals was secured by Act of 1818, (Stat. at Large Vol. 7, p. 321.)

The exact question raised, appears not to have been authoritatively decided in this State, but a question depending on the same general principles was presented in *Pinckney vs. Henegan*, (2 Strob., 251), where it was decided that an appeal from a peremptory *mandamus* was not a *supersedeas*, but that the writ must be obeyed notwithstanding such appeal. The Court places its decision on the authority of the case of the Dean and Chapter of Dublin *vs. Dowgatt*, 1 P. Wills, 349, approving the grounds of decision afforded by the report of that case.

The case of the Dean and Chapter of Dublin *vs. Dowgatt* arose shortly after the passage of the Act of 9 Anne, and is an authority bearing upon the present question, so far as it is influenced by the terms of that statute. The question before the Court was, whether the pendency of a writ of error to bring up a peremptory *mandamus* was a *supersedeas*

of the writ. It was held not to be a *supersedeas*, "for that such a construction would quite defeat the end of the statute, and prevent the officer who was chosen annually from having any fruit of the *mandamus*." This expression must be regarded as a qualified statement of the more general doctrine, readily recognized, that the subjects of controversy ordinarily involved in cases of *mandamus* are of such a nature that delay in affording a remedy is equivalent to its denial. Such must also be the understanding of the general observations as to the effect of refusing a *supersedeas* made by the learned Judge who delivered the opinion of the Court in *Pinckney vs. Henegan*.

The basis of decision thus laid down in reference to the case of *mandamus* is still more forcible in its application to cases of *quo warranto*. The former case concerns only some one official act to be performed, while the latter involves the capacity of performing any official act whatever. In both cases the public have the primary interest involved, and the respondent but a secondary. So, in *mandamus*, the extent of that interest is limited to the performance of a single act of duty, while in the case of *quo warranto* that interest is commensurate with the importance of the very office itself.

Apart herein from any consideration of the intimate relationship existing between the two remedies under consideration growing out of their remedial uses, they are brought into peculiar relation, both by the Act of 9 Anne and that of 1818. They are treated in both Acts as part and parcel of the same system of remedial means, while in the latter Act they are invalid in reference to the very right of appeal itself. The inference is irresistible that the effect of such appeal must be the same as to both methods of procedure.

The authority of *Pinckney vs. Henegan*, must, therefore, be regarded as embracing the determination of the present question.

The question, whether the proper remedy in the present case is by attachment, was not argued, but will properly arise on the return of the attachment. The rule to show cause will be made absolute.

(Signed)

A. J. WILLARD,

Associate Justice Supreme Court of South Carolina.

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